

for the time being to nominate and appoint one sufficient person to hold the office, and to appoint the place where he should be resident. It was provided that in case of a vacancy by death, forfeiture, or surrender of such Registrar, the Justices of the Peace for the county, at the General Quarter Sessions next after such vacancy, should in open Court draw up a memorial of such vacancy, and transmit it to the Governor, by whom within a month after the receipt of the memorial a new appointment was to be made. The Registrar was required to take oath of office, and to give security by a recognizance with two sureties for the due performance of his duties. If he, or his deputy (whom the statute permitted him to appoint) neglected to perform the prescribed duties, or committed or suffered any undue or fraudulent practice in the office, and were thereof lawfully convicted, he should forfeit his office.

This Act, with some others affecting it, were repealed by 9 Vic., ch. 34. By this statute, which consolidated and amended the previous law, the Governor was authorized to appoint in any new county in Upper Canada a proper person to perform the duties of Registrar, as well as to fill up any vacancy which might occur by death, resignation, removal from office or forfeiture. The appointment, which had theretofore been made by commission under the hand and seal at arms of the Governor, was thenceforth to be under the great Seal of the Province. The Registrar and his deputy were to take an oath of office, and the Registrar was, as before, to enter into a recognizance with sureties.

Upon a full consideration of this statute, under which the plaintiff was appointed, I am of opinion that, notwithstanding in his commission the office was conferred "during pleasure," he acquired and took it during good behaviour, for the statute in my view creates an office of freehold, and the character of the office cannot be changed by the terms of the commission.

The language used in conferring the authority to appoint is general, containing no defined limitation as to the duration of the tenure of office, except that which arises from the death or the acts of the officer himself. The statute does not make the tenure dependent on the pleasure of the Governor nor even of the Crown.

There is, further, express provision that under certain circumstances, and after certain proceedings, the tenure shall cease, so that, while the statute says nothing to limit the appointment, it does provide for removal or forfeiture upon some expressed contingencies.

Thus, if any Registrar does not keep his office in the place named for that purpose, or, not having himself a fire-proof office or vault, does not remove to that provided for him by the County Council, he is liable to removal by the Governor on a presentment of the grand jury at the Quarter Sessions, to be founded upon the evidence of two or more competent witnesses. So also, if the Registrar or his deputy neglect to perform their duty, or commit or suffer any undue or fraudulent practice in the execution thereof, and be thereof lawfully convicted, then the Registrar forfeits his office. And if he ceases to reside within his county or becomes, by sickness or otherwise, wholly incapable of discharging the duties of his office, the Governor may

remove him on presentment by the grand jury, as aforesaid, founded upon the like kind of evidence.

The vacating of the office being provided for on the existence of certain causes, such existence to be established upon evidence and presentment or conviction founded thereon, it appears to me that the proper inference from the statute is that the Legislature intended the tenure to last until the Registrar violated one or other of these conditions, and such violation was moreover established in the manner pointed out. In my opinion, this is equivalent to declaring that the office is to be held during good behaviour, *i.e.*, so long as the prescribed conditions are faithfully observed.

And so far as the public service in regard to this office is concerned, the tenure during good behaviour is most likely to conduce to the public advantage, for, to borrow Lord Holt's language, in *Harcourt v. Fox* (1 Show. 515), the occupant "will be encouraged to endeavour the increase of his knowledge in that employment, which he may enjoy during life; whereas precarious dependent interests in places tempt men to the contrary."

It will scarcely be urged that by introducing the words "during pleasure" into the commission, the Registrar could be deprived of the protection which the statute gives him, that he must be convicted before he can be said to have forfeited his office, and presented by a grand jury before he is liable to removal. But if not, then for any of those serious omissions or breaches of duty which the statute does provide for, the Governor cannot remove, though the commission is during pleasure, while upon other grounds, and possibly grounds wholly unconnected with his conduct as Registrar, a person holding that office might be summarily dismissed. I cannot imagine that if the Legislature had contemplated a tenure at the will of the Crown, they would have only limited the exercise of the power of removal in those cases, in which the public interests would have most clearly justified its exercise.

The question seems to have arisen under the former Registry Act of Upper Canada more than fifty years ago. Before the year 1808, David McGregor Rogers held a commission as Registrar of the two counties of Northumberland and Durham. It is, I believe, also the fact that he was in that year, as well as before and perhaps after, a member of the house of Assembly; and it has been suggested that in some way he gave offence, in consequence of which an attempt was made to deprive him of his office as Registrar, the commission for which, both under the statute 35 Geo. III. and that of 9 Vic., has contained the words "during pleasure." And on the 15th March, 1808, a commission issued appointing Thomas Ward, Esq., Registrar for the counties of Northumberland and Durham. Rogers, however, held all the books and papers, and in Michaelmas term, 49 Geo. III. (November, 1808) the Attorney General, on the part of the King, obtained a rule for the issue of a mandamus (*Nisi* I presume) ordering Rogers to deliver over these books, &c., to Ward. In Trinity term following, on the return of the mandamus, the Attorney and Solicitor General were heard in support of the application for a peremptory writ, and Mr. Rogers appeared and argued against it;